

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 75 of 1989

in

SPECIAL CIVIL APPLICATION No 36 of 1980

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RS DUBE

Versus

DIST SUPERINTENDENT OF POLICE

Appearance:

MR JR NANAVATI for Appellant

MR B.Y. MANKAD, ASSTT.GOV.T.PLEADER for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL and
MR.JUSTICE C.K.BUCH

Date of decision: 16/12/98

ORAL JUDGEMENT Per Buch,J.

Unsuccessful petitioner of the above Special civil

application has preferred this Letters Patent Appeal and has submitted that the finding of the learned Single judge is erroneous. According to the appellant-petitioner, he was serving as a police sub-inspector at the relevant time at Sidhpur of Mehsana district and was falsely implicated or involved in the criminal prosecution by the higher officials including Dy.S.P. of the division and the D.S.P. of the district where he was serving.

It was the case of the petitioner before the learned Single Judge that he was prosecuted before the learned Judicial Magistrate, First class, Sidhpur where he was honourably acquitted and, therefore, there was no scope to initiate departmental proceedings for the alleged misconduct. At the time of hearing of the Special civil application, the petitioner had also applied for interim relief and the same was granted. The say of the petitioner was that even the department could not have charge sheeted him for departmental proceedings. The chapter ought to have been treated as concluded moment, he was honourably acquitted by the competent criminal court.

While dealing with the case of the petitioner, though various grounds were agitated before the learned Single Judge, learned counsel Mr. Nanavati at the relevant time, has pressed some of those grounds and on going through the order of the learned Single Judge, we are satisfied that all these grounds are properly dealt with. The learned Single Judge has appreciated the decision of the learned Magistrate who has acquitted the appellant-petitioner and other co-accused of the crime which was registered against them. We agree that the learned Single Judge was not to act as an appellate authority over the decision of the learned Magistrate. However, according to us, at the time of appreciating the case of the petitioner, the learned Single Judge was right in appreciating the entire scenario of the facts available on record with the department who has decided to initiate the departmental proceedings against the appellant-petitioner.

The charge sheet given to the petitioner reads as under:
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"Shri R.S.Dube, P.S.I., at present serving at Head quarters, Mehsana when he was serving in the Sidhpur Police station in the year 1976, on 4.7.1976, at 22.15 O' clock was found in drunken condition in the premises of Musatafa Nashirkhan

Pathan, in Mahemadpura, Tower chowk at Sidhpur, when it was raided by Shri K.H.Rathod, Home Police Inspector of Mehsana district at the relevant time, at present at Porbandar and other police officers, on the gambling Adda."

The say of the appellant before the learned Single Judge was that he was falsely implicated in the criminal proceedings on the eve of further promotion stage and his acquittal was honourable and, therefore, he could not have been charge sheeted for departmental proceedings. To appreciate this aspect, the learned Single Judge has examined the facts available on record and from the documents produced by the petitioner himself. It is not a matter of dispute that according to the report of the Forensic Science Expert, there were considerable percentage of alcohol found in the blood of the petitioner. The raid was carried out by senior officials and the petitioner was apprehended. And therefore, there being prima facie case, the department intended to initiate departmental proceedings against him. There cannot be any legal bar. The finding of the learned Single Judge is based on sound principle of law and he has rightly observed that as the petitioner does not fall in any of the exceptions recorded by the learned Single Judge in the case of Abdul Hakim vs. District Superintendent of Police, (19 GLH 210). In Abdul Hakim's case (supra), it is observed by the learned Single Judge that acquittal in criminal court does not operate as absolute bar in the departmental proceedings. This ratio is sound proposition of law even today and the everything does not rest on the acquittal by the criminal court. It has been rightly held that the petitioner has no case and only the learned Single judge was obliged to dismiss the Special civil application. There is no patent illegality or apparent error in the appreciation of facts and, so, we are not inclined to interfere with the finding of the learned Single judge and hence, this appeal requires to be dismissed. Accordingly, it is dismissed, with no order as to costs.